

Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Request for Waiver by)	
)	
Bonesteel-Fairfax High School)	File No. SLD-170859
Bonesteel, South Dakota)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21✓
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: January 18, 2002

Released: January 22, 2002

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Waiver Request filed by Bonesteel-Fairfax High School (Bonesteel-Fairfax), Bonesteel, South Dakota.¹ Bonesteel-Fairfax seeks a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny Bonesteel-Fairfax's Waiver Request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.³ The Administrator must post the FCC Form 470 on its website, and the applicant is required to wait 28 days before making a commitment with a

¹ Letter from Loris J. Lindskov, Bonesteel-Fairfax High School, to Federal Communications Commission, filed August 3, 2000 (Waiver Request).

² *Id.*

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504(b)(1), (b)(3).

selected service provider.⁵ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁶ The Commission's rules allow the Administrator to implement an internal filing period ("filing window") for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.⁷ Applications that are received outside this filing window are subject to separate funding priorities under the Commission's rules.⁸ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

3. Bonesteel-Fairfax requests a waiver of the Funding Year 3 application window, which closed on January 19, 2000 at 11:59 p.m. Eastern Standard Time.⁹ Bonesteel-Fairfax was initially denied discounts for Funding Year 2.¹⁰ It appealed this denial, and SLD granted the appeal in part.¹¹ However, Bonesteel-Fairfax asserts that while its appeal for Funding Year 2 was pending, it was told by an SLD representative that it was unnecessary to file an application for Funding Year 3 until the appeal for Funding Year 2 was resolved.¹² Bonesteel-Fairfax states that at some subsequent point, it again spoke with SLD, and was told that it should, in fact, apply for discounts for Funding Year 3 regardless of whether its Funding Year 2 appeal had been resolved.¹³

4. Bonesteel-Fairfax filed a Funding Year 3 FCC Form 471 on January 12, 2000, within the filing window.¹⁴ However, in its Funding Year 3 application, Bonesteel-Fairfax did not submit a request for services relating to the service at issue in the pending Funding Year 2 appeal.¹⁵ This service involved funding for the third year of a three-year contract.¹⁶ Thus, Bonesteel-Fairfax did

⁵ 47 C.F.R. §§ 54.504(b)(3), (4); § 54.511.

⁶ 47 C.F.R. § 54.504(c).

⁷ 47 C.F.R. § 54.507(c).

⁸ 47 C.F.R. § 54.507(g).

⁹ Waiver Request; SLD web site, What's New (December 6, 1999) <<http://www.sl.universalservice.org/whatsnew/121999.asp>>.

¹⁰ Waiver Request; Letter from Schools and Libraries Division, Universal Service Administrative Company to Morris H. Bates, Bonesteel-Fairfax High School, dated October 5, 1999 (Year 2 Funding Decision Commitment Letter).

¹¹ See Waiver Request; Letter from Schools and Libraries Division, Universal Service Administrative Company to Loris Lindskov, Bonesteel-Fairfax High School, dated May 8, 2000 (approving in part Bonesteel-Fairfax's appeal of SLD's denial of Funding Request Number 287272).

¹² Waiver Request.

¹³ *Id.*

¹⁴ FCC Form 471, Bonesteel-Fairfax High School, filed January 12, 2000 (Year 3 Form 471).

¹⁵ *Id.*

¹⁶ *Id.*; Letter from Loris J. Lindskov, Bonesteel-Fairfax High School, to Schools and Libraries Division, Universal Service Administrative Company, filed June 29, 2000 (Letter of Appeal to SLD).

not submit a Funding Year 3 request for its contract with Connecting Point Computer Center DBA Ultra, Inc., Funding Request Number 287275.¹⁷

5. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹⁸ In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of getting its forms and other information to SLD for processing within the established deadline if the applicant wishes to be considered with other in-window applicants.

6. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. Bonesteel-Fairfax seeks relief on the basis that an SLD representative incorrectly advised it that it need not file an application in Funding Year 3 until its Funding Year 2 appeal was resolved.¹⁹ We decline to grant relief on those grounds. Where a party has received erroneous advice, the government is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly when relief is contrary to a rule.²⁰

7. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant rules and procedures.²¹ In order for the program to work efficiently, the applicant must assume responsibility for timely submission of correct application materials if it wishes to be considered within the window. Here, Bonesteel-Fairfax fails to demonstrate a sufficient basis for waiving the Commission's filing window deadline.

¹⁷ Compare Year 2 Funding Commitment Decision Letter with Year 3 Form 471.

¹⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁹ Waiver Request.

²⁰ *In re Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4707-08, para. 22 (1991) (citing *Office of Personnel Management v. Richmond*, 497 U.S. 1046 (1990)).

²¹ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. 2000), at para. 8 ("In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.").

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Waiver Request filed by Bonesteel-Fairfax High School, Bonesteel, South Dakota, on August 3, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau